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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

NISHAT KOUSAR,

Plaintiff,

v.

ROBERT MUELLER, III, Director,
 Federal Bureau of Investigations;
 GREGORY CHRISTIAN, Acting Director,
 Nebraska Service Center, USCIS;
 EMILIO GONZALES, Director, U.S.
 Citizenship and Immigration Services (USCIS);
 MICHAEL CHERTOFF, Secretary,
 Department of Homeland Security;
 MICHAEL MUKASEY, Attorney General,
 Department of Justice;
 TERRY RICE, San Francisco Field Office
 Director, USCIS;

Defendants.

No. C 07-5221 EDL

**DEFENDANTS' CROSS-OPPOSITION
 TO PLAINTIFF'S CROSS-MOTION FOR
 SUMMARY JUDGMENT; and
 DECLARATION OF F. GERARD
 HEINAUER**

Date: March 4, 2008 (reset by Court)
 Time: 9:00 a.m.
 Courtroom: E, 15th floor

Plaintiff asks this Court to issue a writ of mandamus, compelling Defendants to make a determination on her application for adjustment of status, which has been pending for completion of the Federal Bureau of Investigation (FBI) name check since January 2004. See Declaration of F. Gerard Heinauer (Heinauer Decl.) ¶ 3.

Plaintiff currently posses a travel document valid through February 2009. See Heinauer Decl. ¶ 7. Although eligible, Plaintiff has not requested a valid work authorization document. Id.

Defendants' Cross-Opposition to Plaintiff's Motion
 C07-5221 EDL

1 The FBI completed Plaintiff's name check on January 24, 2008. Heinauer Decl. ¶ 13. Some
2 cases involve complex information and cannot be resolved quickly and eligibility issues need to be
3 resolved. Heinauer Decl. ¶ 15. USCIS's Nebraska Service Center is actively adjudicating
4 Plaintiff's application in accordance with standard procedures for asylee adjustment of status
5 applications. Heinauer Decl. ¶ 19.

6 First of all, only Defendants from the United States Citizenship and Immigration Services
7 (USCIS) are properly named. Konchitsky v. Chertoff, No. C-07-00294 RMW, 2007 WL 2070325,
8 at *6 (N.D. Cal. Jul. 13, 2007). Moreover, it appears that the FBI has completed the name check
9 and, therefore, claims against Defendant Mueller should be dismissed as moot. Heinauer Decl. ¶
10 15.

11 With respect to the claims against Defendants from USCIS, as attested by Mr. Heinauer,
12 Plaintiff's application is being actively adjudicated and should be resolved in the near future.
13 Heinauer Decl. ¶ 16-19. Accordingly, Plaintiff has not shown that Defendants are refusing to
14 adjudicate her application or that they are acting arbitrarily. The Court should dismiss Defendants
15 Mueller and Mukasey and grant remaining Defendants' motion for summary judgment.

16
17 Dated: February 12, 2008

Respectfully submitted,

18 JOSEPH P. RUSSONIELLO
19 United States Attorney

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21 /s/
22 ILA C. DEISS
23 Assistant United States Attorney
24 Attorney for Defendants
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